CASE NO.

IN THE

SUPREME COURT OF THE UNITED STATES

April Term, 1982

Luis Carlos Arango

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Florida

RESPONDENT'S APPENDIX

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JUROR FRANCES JACKSON: No.

JUROR GRANT: No.

JUROR ALVAREZ: No.

JUROR BALDWIN: No.

JUROR GONZALEZ: No.

JUROR GROMADZKI: No.

JUROR PEREZ: No.

JUROR GORDON: No.

MR. KAHN: I ask you to speak up, if you do.

Does anybody sitting on this panel have any moral or religious beliefs that would prevent you from sitting in judgment of another person for his actions, because that's what you are doing. You are actually going to determine whether this man is guilty and should be punished appropriately, or not guilty.

That's sitting in judgment of your fellow man.

Mr. Alvarez?

JUROR ALVAREZ: I am against the death penalty.

MR. KAHN: Okay.

We are going to get to that in a second. I want to ask you just this one question at this point. It is a first degree murder case which means you can be punished one of two ways. Number one, by the death penalty or, in the alternative, by the Judge, who does the sentencing; not the jury, the Judge. And number two, by life

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imprisonment. And there are only two ways if the Court deems that it deserves the death penalty, the Judge has that final decision.

However, the jury that sits in this case makes a recommendation based on the facts in a separate proceeding, apart from guilt or innocence.

It's like a two-stage trial.

Now, would the fact that you are against the death penalty, is that feeling that you have so strong that it would even prevent you from coming back with a guilty verdict on the facts, aside from what the penalty is? Just the fact that he may get the death penalty in the end by the Judge?

JUROR ALVAREZ: I believe so.

MR. KAHN: If, in fact, the State proved its case, Mr. Alvarez, beyond and to the exclusion of every reasonable doubt, and the evidence was so overwhelming that, in fact, this man, in your mind, is guilty of first degree murder, would you be able to come back with a verdict of guilty of first degree murder with the knowledge, again, even though all the evidence is there of the charge, that the death penalty may be in the background? Not when it's a questionable situation, but where the evidence is so overwhelming that in your mind that you say, "My God, this man is guilty of first degree murder as charged." Would

you still not be able to return a verdict of guilty?

JUROR ALVAREZ: I am really not sure because it conflicts with my moral beliefs.

MR. KAHN: Okay.

Let me give you one other question. I will be asking this of probably every one of you sitting on the the panel.

Mr. Alvarez, do you ever foresee a set of facts that may be so heinous, so cruel and meeting all the criteria that Her Honor will instruct you is the criteria before you can recommend death, meaning a good number of those aggravating circumstances that would warrant the death penalty. Do you ever foresee a circumstance like that where you could warrant the death penalty?

JUROR ALVAREZ: Yes, it's possible.

MR. KAHN: So, there is a possibility of you recommending the death penalty in the end?

JUROR ALVAREZ: Right.

MR. KAHN: Okay.

I'd like to ask some general questions of the whole panel, and then we will get back to individual people.

Does anybody here know anybody in the, or know any law enforcement officers, anybody involved in law enforcement? Would you raise your hand?

JUROR GINSBERG: [Juror indicates.]

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JUROR WHITTEN: [Juror indicates.]

JUROR JONES: [Juror indicates.]

JUROR GORDON: [Juror indicates.]

MR. KAHN: Okay. Mr. Ginsberg, do you know police officers or anybody else involved in law?

JUROR GINSBERG: Not on a close relationship, but---

MR. KAHN: Acquaintances?

JUROR GINSBERG: Some people that have come into my business.

MR. KAHN: Do you socialize with any of them?

JUROR GINSBERG: No, sir.

MR. KAHN: Any relatives of yours in law enforcement?

MR. GINSBERG: No, sir. No, sir.

MR. KAHN: Okay.

Is that Miss or Mrs. Whitten?

JUROR WHITTEN: Mrs. Whitten.

MR. KAHN: Do you have anybody who ---

JUROR WHITTEN: I have a son and a son-in-law who are law enforcement officers.

MR. KAHN: And what agency do they work for?

JUROR WHITTEN: Hialeah Police Department.

MR. KAHN: Both of them?

JUROR WHITTEN: Yes.

MR. KAHN: Do you ever discuss their cases that they may be working on or discuss the judicial system with

JUROR POWERS: No, sir.

MR. KAHN: Did you ever study law courses or anything like that while you were in school?

JUROR POWERS: No.

MR. KAHN: Criminal justice, anything like that?

JUROR POWERS: No.

MR. KAHN: Thank you, Mr. Powers.

Mr. Alvarez, how long have you lived in Dade? I am sorry?

JUROR GROMADZKI: Could I be temporarily excused? I have got some bad stomach cramps.

MR. KAHN: I have no problem. Sure.

THE COURT: Yes, you can be temporarily excused. Go into the jury room.

MR. KAHN: Go right in there.

JUROR CROOKS: In here [indicating]?

MR. KAHN: Mr. Gromadzki, you need to go to the men's room? There is a bathroom in there.

Okay, Mr. Alvarez, you work for the Legal Services as a law librarian?

JUROR ALVAREZ: Yes, sir.

MR. KAHN: How long have you been doing that?

JUROR ALVAREZ: Three years.

MR. KAHN: What did you do before that?

JUROR ALVAREZ: I was in college.

MR. KAHN: Where?

JUROR ALVAREZ: Florida State University.

MR. KAHN: And what field of study?

JUROR ALVAREZ: American Government.

MR. KAHN: Do you have a degree in Political Science?

JUROR ALVAREZ: Yes, sir.

MR. KAHN: And how long have you been living in Dade County?

JUROR ALVAREZ: Five years.

MR. KAHN: Okay.

And where did you live before that?

JUROR ALVAREZ: New York City.

MR. KAHN: Manhattan?

JUROR ALVAREZ: Well, I have been living in Florida seven years, two years in Tallahassee.

MR. KAHN: While you were going to school?

JUROR ALVAREZ: Five years here, yes.

MR. KAHN: And where in New York are you from?

JUROR ALVAREZ: Manhattan.

MR. KAHN: Is that where your family is?

JUROR ALVAREZ: No, they are here in Miami.

MR. KAHN: Were you born up there?

JUROR ALVAREZ: Yes, sir.

MR. KAHN: Now, the fact that you may know people that work in the State Attorney's Office, is that going

to influence you one way or the other as to the guilt or innocence of this man?

JUROR ALVAREZ: Not at all.

MR. KAHN: I assume you also know people that do criminal defense work, due to the nature of your job?

JUROR ALVAREZ: Yes.

MR. KAHN: Did you ever take any law courses, business law?

JUROR ALVAREZ: Yes.

MR. KAHN: What type of law courses?

JUROR ALVAREZ: Business law, administrative law, criminal justice.

MR. KAHN: Do you accept the theories behind things such as the State's burden of proof; presumption of innocence; proof beyond a reasonable doubt? You accept all those premises?

JUROR ALVAREZ: Yes, sir.

MR. KAHN: You understand that that is the basis of our judicial system?

JUROR ALVAREZ: Yes, sir.

MR. KAHN: Now, you said you are morally opposed to the death penalty. With that in mind, would you still be able to follow His Honor's instructions on the law and disregard the consequences of your veridct? In other words, in the first phase vote just on the evidence and

the crime charged, and would you be able to do that?

JUROR ALVAREZ: In the first phase I can vote on the evidence that's been presented.

MR. KAHN: Okay.

What I am saying is if the State proves the Defendant guilty beyond and to the exclusion of a reasonable doubt, are you able to vote guilty based on the law that His Honor is going to give you?

JUROR ALVAREZ: I don't believe so, sir.

MR. KAHN: You will not vote no matter what, guilty of first degree murder?

JUROR ALVAREZ: No, sir.

MR. KAHN: Is that due to the fact of the possibility of a death sentence?

JUROR ALVAREZ: Yes, sir.

MR. KAHN: Your Honor, I make the same request of Mr. Alvarez.

THE COURT: Your witness, Mr. Flynn.

MR. KAHN: Thank you, sir.

MR. FLYNN: Mr. Alvarez, I don't want to put you on the spot, sir, but could you explain why you could not decide based on the evidence whether my client is guilty of first degree murder in the first phase of the trial?

JUROR ALVAREZ: Because I am morally opposed to the death penalty. If I were to decide guilt, he would

the crime charged, and would you be able to do that?

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MR. FLYNN: Mr. Alvarez, I don't want to put you on the spot, sir, but could you explain why you could not decide based on the evidence whether my client is guilty of first degree murder in the first phase of the trial?

JUROR ALVAREZ: Because I am morally opposed to the death penalty. If I were to decide guilt, he would

probably get the death penalty.

MR. FLYNN: Okay.

JUROR ALVAREZ: It's only if I am asked to decide if he should receive capital punishment that bothers me. It's not the determination of guilt or innocence. But, the latter part.

MR. FLYNN: Okay. The latter portion.

Do you understand from what's been said that the most your job would be would be to make a recommendation by a majority verdict to the Judge who would have the final say?

JUROR ALVAREZ: Right.

MR. FLYNN: Who could disregard your recommendation completely?

JUROR ALVAREZ: Yes, I understand that.

MR. FLYNN: What I want to be certain of is to have a jury that is a cross-section of this community to decide the guilt or innocence of my client. I take it that you have no problem understanding what the -- understanding evidence from the witness stand in this case?

JUROR ALVAREZ: No, I wouldn't have that problem.

MR. FLYNN: You strike me -- is that you have no problem understanding what the law is as the Judge instructs you on the law. Do you think that being in that situation and knowing, as I have indicated before,

that there is not going to be any plea to a jury or find the man not guilty because of the death penalty? There's not going to be any of that that you could, in the first phase, fairly and objectively decide whether or not the Government has proven my client guilty beyond a reasonable doubt of first degree murder or any other crime?

JUROR ALVAREZ: Yes, I would be able to.

MR. FLYNN: Okay.

I take it then, it's the second phase that gives you problems?

JUROR ALVAREZ: Yes.

MR. FLYNN: Would it be fair to say that you would be, because of your moral objections to the death penalty, be hard put to recommend the death penalty for most any situation?

JUROR ALVAREZ: Yes, sir.

MR. FLYNN: Okay.

Now, His Honor will not just, if it ever gets that far, His Honor will not just ask you all to go back there and reach a recommendation. What His Honor would do would give you some guidelines, what they call aggravating circumstances and mititgating circumstances to consider. So, it wouldn't be just a blind recommendation based on belief or disbelief in the death penalty. It would be a reasoned decision based on guidelines.

Do you think that if the guidelines strongly enough indicated the death penalty, that even though you personally are morally opposed to the death penalty, you could accept and listen to the viewpoints of fellow jurors who might recommend the death penalty?

JUROR ALVAREZ: I think so.

MR. FLYNN: Okay.

And do you think at this point at least, you could keep an open mind so that under some set of facts, because you don't know any of the facts yet.

JUROR ALVAREZ: Right.

MR. FLYNN: Under some set of facts, perhaps your fellow jurors could even persuade you that under the law in this case the death penalty was the appropriate recommendation from the jury?

JUROR ALVAREZ: Under certain facts, yes, I could.

MR. FLYNN: Okay.

I have no further questions.

Thank you.

THE COURT: Let me ask you this question: Could you make an impartial and fair determination of the Defendant's guilt of first degree murder based upon the evidence that you have heard, based upon the law that I will give you and eliminate, in making that determination, your feelings against the death penalty, knowing that you will then

have to decide whether the death penalty will be applicable?

JUROR ALVAREZ: Sir, Your Honor, I don't believe that I can eliminate my moral beliefs against the death penalty.

THE COURT: Juror will be excused for cause.

MR. FLYNN: Your Honor, for the record, I would object.

THE COURT: So noted.

MR. KAHN: Can I just ask him one more question?

THE COURT: Go ahead.

MR. KAHN: Would your moral beliefs against the death penalty be so overwhelming and so influential that it may affect your determination as to guilt or innocence of first degree murder?

JUROR ALVAREZ: Can you ask that question again?

MR. KAHN: This moral conviction that you say you have against first degree murder, against the death penalty, would that feeling and belief be so strong and overwhelming that it would influence your verdict regarding guilt or innocence?

JUROR ALVAREZ: It really depends on the facts of the case.

MR. KAHN: Okay.

So, your statement is, no, it wouldn't affect your

determination of guilt or innocence?

JUROR ALVAREZ: In certain circumstances.

MR. KAHN: Okay.

If His Honor were to instruct you that not at all should it ever influence a question of guilt or innocence, would you be able to follow that instruction completely, and not be affected by your moral belief in determining the guilt or innocence phase?

JUROR ALVAREZ: No, sir, I don't believe so.

MR. KAHN: Okay.

THE COURT: Juror is excused for cause.

MR. KAHN: Thank you, Your Honor.

THE CLERK: Number 62-D, Raymond Placid.

MR. KAHN: Mr. Placid, would you state your name and the years you have been in Dade County?

JUROR PLACID: My name is Raymond Placid and I have lived here two years.

MR. KAHN: And where did you live before coming to Dade County?

JUROR PLACID: Gainesville.

MR. KAHN: Are you employed, sir?

JUROR PLACID: Yes.

MR. KAHN: What do you do?

JUROR PLACID: I am a C.P.A.

MR. KAHN: I can't hear you.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

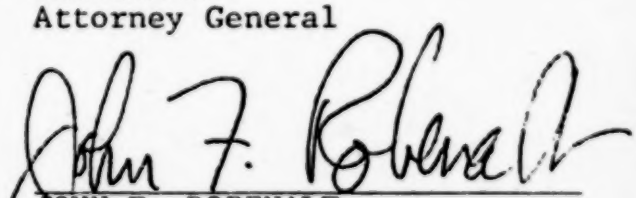
CASE NO.

LUIS CARLOS ARANGO,	:	
Appellant,	:	
vs.	:	NOTICE OF APPEARANCE
THE STATE OF FLORIDA	:	
Appellee.	:	

COMES NOW, the undersigned cousel and submit their formal Notice of Appearance on behalf of the Appellee, THE STATE OF FLORIDA, in the above referred case.

RESPECTFULLY SUBMITTED, On this 26th day of May, 1982, at Miami, Dade County, Florida.

JIM SMITH
Attorney General



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